

House Bill 321
February 11, 2011
Presented by Bob Lane
House Judiciary Committee

Mr. Chairman and committee members, I am Bob Lane, Chief Legal Counsel of the Montana Department of Fish, Wildlife & Parks (FWP). I am here in opposition of House Bill 321.

HB321 ignores the United States Constitution, is itself a nullity, makes criminals of state employees who protect our wildlife heritage, and prohibits much of the management of wildlife in Montana.

While citizens are entitled to debate the meaning and interpretation of the United States Constitution, one thing is certain – the federal Endangered Species Act (ESA) is within the powers of the United States Congress under the United States Constitution as it has been interpreted and implemented. This bill will not change that. Only a legal challenge in the federal court can change the interpretation and implementation.

Therefore, it is ironic that the only nullity created by this bill is that HB321 is itself a nullity as it addresses the federal ESA.

However, HB321 does far more than fail to nullify the federal ESA. It makes criminals of state and local employees who work to protect the wildlife heritage of our state.

The federal ESA itself requires cooperation between the United States Fish and Wildlife Service (USFWS) and state fish and wildlife agencies. FWP, through Memorandums of Understanding with the US Fish and Wildlife Service, actually is the on-the-ground manager of many federally listed wildlife species. This ensures better coordination with and respect for local interests. However, HB321 would make this a crime.

In fact, the bill goes so far as to remove the authority, on page 21, lines 5-9, of FWP to manage species so they do not need to be federally listed and to manage listed species so they can be delisted. The bill then goes even farther to repeal Montana's own endangered species law and rules.

This bill fails to accomplish its stated purpose of nullifying the federal ESA while going to great lengths to ensure that the state itself, and under its own laws, will not have the capacity to protect our most vulnerable wildlife species; all in an apparent, but unsuccessful, attempt to assert state rights. It does just the opposite leaving only the federal government with the authority to manage the most sensitive, vulnerable and critical species in Montana.

FWP strongly opposes HB321.